IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 2395 OF 2006(E)

AGAINST THE JUDGEMENT IN OP.11543/1997 DATED 16/12/2005
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APPELLANT: RESPONDENT NO: 2

THE KERALA LIVESTOCK DEVELOPMENT
BOARD LTD.,
REP. BY ITS MANAGING DIRECTOR,
GOKULAM, PATTOM, THIRUVANANTHAPURAM.

BY ADV. SMT.SUMATHY DANDAPANI (SR.)

RESPONDENTS: PETITIONER/PETITIONER & Rs. 1 TO 3 IN THE O.P.
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1. V.THANKAPPAN,
VASUDEVA SADANAM, AVADUTHARA,
VIZHINJAM P.O., THIRUVANANTHAPURAM.

2. THE CHAIRMAN,
THE KERALA STOCK LIVESTOCK DEVELOPMENT AND MILK
MARKETING BOARD LTD., GOKULAM,
PATTOM, THIRUVANANTHAPURAM.

3. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
AGRICULTURAL DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.BENOY THOMAS

GOVT. PLEADER SRI. BENNY GERVACIS.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 2395 OF 2006

DATED THIS, THE 29TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Second respondent in O.P. 11543/1997 is the appellant. The first respondent herein filed the above said writ petition inter alia seeking for issuance of a writ of mandamus to the appellant Board to calculate and disburse the arrears of salary due to him on account of the refixation of his post and salary as directed in the judgment produced as Ext.P1 along with the writ petition and for a direction to disburse the retiral benefits to him within a time limit and for other consequential reliefs.

2. The first respondent has retired from the service of the appellant - the Kerala Livestock Development Board Ltd., in 1993 as a bull attender. Earlier, he was employed in the Dhoni Farm, at Palakkad which was under the control of the Dairy Development Department. That Farm was taken over by the appellant herein. He was, however, not absorbed in the regular establishment of the appellant on the ground that he was only a casual employee working in the Dairy Development Department which compelled

him to approach this Court by filing O.P. 7278/1984. This Court by its judgment Ext.P1 dated 3.11.1988 disposed of the said original petition directing the appellant herein to treat the petitioner as a member of the regular establishment and to fix his salary in the grade of Livestock Attender, without any delay. There was also a direction that the petitioner should be given the monetary benefits consequent on the re-fixation of his salary as well. There is no dispute that the Farm along with the bulls and the bull attenders were eventually transferred to the appellant. This Court, in Ext.P1 judgment, held that the stand of the Board in treating the petitioner as a casual worker is not sustainable since even while he was working in the Dairy Development Department, the post of bull attender was there under the establishment category. It was found by this Court that as per G.O. Rt. 1144/75/Agri. dated 25.4.1975, Ext.P1 produced in the said writ petition, which is produced as Annexure A1 in the present writ appeal, sanction was accorded by the Government for continuance of the temporary post in the Dairy Development Department, detailed in its appendix, till the end of February, 1976. It shows that there were ten bull attenders in the Dairy Development Department who were in the scale of Rs. 200-285 and therefore it is too late for the appellant to contend that they were casual workers. These bull attenders were also taken over by them

when the bull station at Palakkad came under their control. Therefore, the staff who were in the regular establishment of bull station, Palakkad, should continued to be in the regular establishment. The first respondent/ petitioner being a bull attender as on the date of Ext.P1 should therefore be continued to be a member of the regular establishment. The bull attenders post has been re-designated as Livestock Attender and the work carried on by the Livestock Attender is not different from that of the bull attender . In these circumstances, the first respondent/ petitioner was also directed to be treated as a member of the regular establishment under the appellant Board. Since the benefit conferred under Ext.P1 judgment was not paid to the first respondent, he preferred the writ petition for enforcement and implementation of the judgment aforesaid. Incidentally, it may be mentioned that Ext. P1 judgment in O.P. 7278/1984 was upheld by the Division Bench of this Court in W.A. 46/1989 as per its judgment dated 17.10.1995. The learned Single Judge, by the judgment impugned herein, directed to settle the benefits due to the first respondent/petitioner treating him as Livestock Attender under the regular establishment with effect from 25.4.1975 and to work out the consequential benefits. The directions contra contained in Exts.P3 and P6 were thus quashed. The limited issue that has been pressed into service at the time of hearing of this appeal is regarding

the effective date on which the petitioner should be treated as in the regular establishment of the appellant.

3. The learned Senior counsel Smt. Sumathi Dandapani, appearing for the appellant, placing reliance on Annexure A4 proceedings issued by the Director of Dairy Development Department dated 27.8.1976 would contend that the bulls and the bull attenders were transferred to the service of the appellant only with effect from 27.8.1976 and therefore, they can be treated as in regular establishment of the appellant only with effect from that date. It is true that Annexure A4 would read that the eight workers engaged in attending the bulls were also transferred along with the bulls as per the said order and Serial No.4 is the first respondent. But then, since there is already a judgment inter parties, if there is any observation contra what is contained in Ext.A4, the appellant is bound by the said finding. As we have already noticed that Ext.P1 judgment was confirmed in the writ appeal and thus became final.

4. In this regard, we find that in Ext.P1 judgment, this Court held that the bull attenders were taken over by the second respondent (appellant) when the bull station at Palakkad came under its control. Of course, when the bull station at Palakkad came under the control of the second respondent is not stated in the judgment. We find from Ext.A3 proceedings issued by

the appellant himself that the bull station, Dhoni, Palakkad which was under the control of the Dairy Development, including several of the units of the Dairy Department and Animal Husbandry Department were taken over by the Board with effect from 1.5.1976 as per G.O.Ms No. 157/76/AD dated 24.4.1976. If so, 1.5.1976 must be taken as the date on which the bull station at Dhoni, Palakkad were transferred to the appellant and based on the finding in Ext.P1 it has to be held that the first respondent was in the regular establishment of the appellant Board with effect from the said date namely, 1.5.1976. Though Ext.P1 referred to in the judgment in O.P. 7278/1984 is dated 25.4.1975, there is no concrete finding that the first respondent came to be in the regular establishment of the appellant with effect from the said date. On the contrary, as we have already observed above, this Court only found that the bull attenders like the first respondent were taken over by the appellant when the bull station came under its control. It could not have came into its control before the bull station itself is transferred. Hence we find that the first respondent is entitled to all the benefits as directed to be given by the learned Single Judge, with effect from 1.5.1976. Except the above modification, we confirm the judgment in all other respects.

5. The learned Single Judge has fixed the time limit as two months

for compliance of the judgment. In view of the pendency of this writ appeal, the time of two months will run with effect from the date of this judgment.

The writ appeal is disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-